



**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**Docket No. NHTSA-2019-0120**

**Hemphill Brothers Leasing Company;**

**Grant of Petition for Temporary Exemption from**

**Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of grant of a petition for temporary exemption.

**SUMMARY:** In accordance with the procedures in our regulations, NHTSA is granting a petition from Hemphill Brothers Leasing Company, LLC (Hemphill), for a temporary exemption from a shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, “Occupant crash protection,” for side-facing seats on motorcoaches. The grant permits Hemphill to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts). After reviewing the petition and the comments received, the agency has determined that the requested exemption is warranted to enable the petitioner to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

**DATES:** This exemption applies to the petitioner’s motorcoaches produced from [insert date of publication in the FEDERAL REGISTER] until [insert date two years from date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Deirdre R. Fujita, Office of the Chief Counsel, NCC-200, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, Washington, DC, 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**a. Statutory Authority for Temporary Exemptions**

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary deems appropriate, motor vehicles from a motor vehicle safety standard or bumper standard. This authority and circumstances are set forth in 49 U.S.C. 30113. The authority for implementing this section has been delegated to NHTSA by 49 CFR 1.95.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Under part 555, subpart A, a vehicle manufacturer seeking an exemption must submit a petition for exemption containing specified information. Among other things, the petition must set forth (a) the reasons why granting the exemption would be in the public interest and consistent with the objectives of the Safety Act, and (b) required information showing that the manufacturer satisfies one of four bases for an exemption.<sup>1</sup> Hemphill has applied on the basis that the applicant is otherwise unable to sell a motor vehicle with an overall safety level at least equal to that of nonexempt vehicles (*see* 49 CFR 555.6(d)). A manufacturer is eligible for an

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<sup>1</sup> 49 CFR 555.5(b)(5) and 555.5(b)(7).

exemption under this basis only if NHTSA determines the exemption is for not more than 2,500 vehicles to be sold in the U.S. in any 12-month period. An exemption under this basis may be granted for not more than 2 years but may be renewed upon reapplication.<sup>2</sup>

**b. FMVSS No. 208**

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).<sup>3</sup>

In the notice of proposed rulemaking (NPRM) preceding the final rule (75 FR 50958, August 18, 2010) NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.<sup>4</sup> The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. NHTSA believed that<sup>5</sup> “a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.”<sup>6</sup>

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<sup>2</sup> 49 CFR 555.8(b) and (e).

<sup>3</sup> 78 FR 70416 (November 25, 2013); response to petitions for reconsideration, 81 FR 19902 (April 6, 2016). The final rule became effective November 28, 2016 for buses manufactured in a single stage, and a year later for buses manufactured in more than one stage.

<sup>4</sup> 75 FR at 50971.

<sup>5</sup> 75 FR at 50971-50972.

<sup>6</sup> [http://ec.europa.eu/enterprise/automotive/projects/safety\\_considerations\\_long\\_stg.pdf](http://ec.europa.eu/enterprise/automotive/projects/safety_considerations_long_stg.pdf)

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), P.L. 112-141 (July 6, 2012). Section 32703(a) of MAP-21 directed the Secretary of Transportation (authority delegated to NHTSA) to “prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.”<sup>7</sup> As MAP-21 defined “safety belt” to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.<sup>8</sup>

Even as it did so, however, the agency reiterated its view that “the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.”<sup>9</sup> NHTSA also reiterated that there have been concerns expressed in literature in this area about shoulder belts on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, there are simulation data indicative of potential carotid artery injury when the neck is loaded by the shoulder belt.<sup>10</sup> The agency also noted that Australian Design Rule ADR 5/04, “Anchorages for Seatbelts” specifically prohibits shoulder belts for side-facing seats.

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<sup>7</sup> MAP-21 states at § 32702(6) that “the term ‘motorcoach’ has the meaning given the term ‘over-the-road bus’ in section 3038(a)(3) of the Transportation Equity Act for the 21<sup>st</sup> Century (49 U.S.C. 5310 note), but does not include a bus used in public transportation provided by, or on behalf of, a public transportation agency; or a school bus, including a multifunction school activity bus.” Section 3038(a)(3) (49 U.S.C. 5310 note) states: “The term ‘over-the-road bus’ means a bus characterized by an elevated passenger deck located over a baggage compartment.”

<sup>8</sup> For side-facing seats on buses other than OTRBs, in the final rule NHTSA permitted either lap or lap/shoulder belts at the manufacturer’s option.

<sup>9</sup> 78 FR at 70448, quoting from the agency’s Anton’s Law final rule which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907.

<sup>10</sup> Editors: Fildes, B., Digges, K., “Occupant Protection in Far Side Crashes,” Monash University Accident Research Center, Report No. 294, April 2010, pg. 57.

Given that background, and believing there would be few side-facing seats on OTRBs, NHTSA stated in the November 2013 final rule that the manufacturers at issue may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.<sup>11</sup> The basis for the petition would be that the applicant is unable to sell a bus whose overall level of safety is at least equal to that of a non-exempted vehicle. In other words, for side-facing seats, lap belts provide at least an equivalent level of safety as lap and shoulder belts.

### **c. Overview of Petition**

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Hemphill submitted a petition dated April 5, 2018, asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on its OTRBs under 49 CFR 555.6(d). A copy of the petition may be found in the docket (go to <http://www.regulations.gov> and enter Docket No. NHTSA-2019-0019).

Hemphill describes itself as a second-stage manufacturer<sup>12</sup> organized under the laws of Tennessee. The petitioner states that it typically receives a bus shell<sup>13</sup> from an “original manufacturer” and “customizes the Over-the-Road Bus (‘OTRB’) to meet the needs of entertainers, politicians, musicians, celebrities and other specialized customers

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<sup>11</sup> 78 FR at 70448.

<sup>12</sup> While “second-stage manufacturer” is not defined in NHTSA’s regulations, Hemphill is referring to a “final-stage manufacturer,” which is defined in NHTSA’s certification regulation (49 CFR part 567) as “a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle” (49 CFR 567.3). Hemphill states that it also operates the vehicles as a for-hire motor carrier of passengers, “leas[ing] the vehicle with driver to a customer on an exclusive basis for a designated period of time.”

<sup>13</sup> The petition states in its petition (p. 2) that the bus shell “generally contains the following components: exterior frame; driver’s seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signals lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.”

who use motorcoaches as a necessity for their businesses.” Hemphill states that it “builds out the complete interior” of the bus shell, including—

roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, inverter and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

The petitioner states that “fewer than 100 entertainer-type motorcoaches with side-facing seats are manufactured and enter the U.S. market each year.”

In support of its assertion that the exempted vehicles would provide an overall level of safety or impact protection at least equal to that of nonexempt vehicles, Hemphill reiterates NHTSA’s statements in the November 2013 final rule. The petitioner states that NHTSA has not conducted testing on the impact or injuries to passengers in side-facing seats in motorcoaches, so “there is no available credible data that supports requiring a Type 2 belt at the side-facing seating positions.” Hemphill states that if it complies with the final rule as published, it would be “forced to offer” customers—

a motorcoach with a safety feature that could make the occupants less safe, or certainly at least no more safe, than if the feature was not installed. The current requirement in FMVSS 208 for Type 2 belts at side-facing seating positions in OTRBs makes the applicants unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the level of safety of a non-exempted vehicle.

In support of its assertion that the exemption would be consistent with the public interest, Hemphill states “NHTSA's analysis in developing this rule found that such belts presented no demonstrable increase in associated risk.” The petitioner also states that the final rule requiring Type 2 belts at side-facing seats “was not the result of any change in NHTSA policy or analysis, but rather resulted from an overly broad mandate by Congress

for ‘safety belts to be installed in motorcoaches at each designated seating position.’” It states that, based on the existing studies noted in the rulemaking, Type 1 belts at side-facing seats may provide equivalent or even superior occupant protection than Type 2 belts.

The petitioner believes that an option for Type 1 belts at side-facing seats is consistent with the objectives of the Safety Act because it allows the manufacturer to determine the best approach to motor vehicle safety depending on the intended use of the vehicle and its overall design. Additionally, Hemphill states the option meets the need for motor vehicle safety because data indicate no demonstrable difference in risk between the two types of belts when installed in side-facing seats. Finally, the petitioner notes that the option would provide an objective standard that is easy for manufacturers to understand and meet.

### **Notice of Receipt**

On March 28, 2019, NHTSA published a notice of receipt of Hemphill’s petition for temporary exemption and requested comment on the petition.<sup>14</sup> The agency received 8 comments on the petition, all of which supported the request. NHTSA received no comments opposing the petition.

Several commenters, all similarly-positioned final-stage manufacturers of entertainer-type motorcoaches, submitted identical comments supporting Hemphill’s petition.<sup>15</sup> These commenters state that their entertainer motorcoaches are custom built

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<sup>14</sup> 84 FR 11735, Docket No. NHTSA-2019-0019.

<sup>15</sup> D&S Classic Coach, Pioneer Coach, Roberts Brothers Coach Co., Russell Coach, and Nitetrain Coach Co. These commenters were among the “other petitioners” listed in the attachment to the Hemphill petition NHTSA discussed in the notice of receipt of Hemphill’s petition (84 FR at 11738). Hemphill’s petition originally sought to cover 39 “other petitioners” listed in an attachment to the petition. NHTSA noted that the Safety Act and NHTSA’s procedures did not clearly allow the bundling of petitions for the

and typically include side-facing, perimeter seating. They state that fewer than 100 entertainer motorcoaches are manufactured each year. They believe that there is no available data supporting requiring a Type 2 belt at side-facing seats and are concerned that serious injury to passengers could result if they installed the shoulder belts at those seats. Another entertainer motorcoach manufacturer<sup>16</sup> stated that there are no statistics or test models showing that a shoulder belt provides a benefit on side-facing seats.

The American Bus Association (ABA), a trade association for operators who transport the public, and the National Interstate Insurance Company, an insurance provider to the commercial passenger transportation industry, strongly supported Hemphill's petition.<sup>17</sup> These commenters also affirm that fewer than 100 entertainer motorcoaches are manufactured each year. They expressed concern that serious injury to passengers could result from operators and manufacturers complying with the FMVSS No. 208 rule to install the shoulder belts and believe there is no data that supports requiring a Type 2 seat belt at side-facing seats.

### **Agency Analysis and Decision**

After reviewing Hemphill's petition for temporary exemption and the comments received on it, the agency is granting the petition. Granting the petition will enable the petitioner to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

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type of exemption Hemphill sought. Subsequently, the other manufacturers, including these commenters, submitted individual petitions for temporary exemptions. NHTSA will address those petitions separately from this document.

<sup>16</sup> Superior Coach Interiors, which is also among the "other petitioners" attached to the Hemphill petition.

<sup>17</sup> National Interstate describes itself as currently insuring a significant share of the entertainment motorcoach industry market and states that it has consistently insured motorcoaches for 30 years.



In the rulemaking implementing MAP-21's mandate for seat belts on motorcoaches, NHTSA's proposal in the NPRM was to allow manufacturers an option of installing Type 1 (lap belt) or Type 2 (lap and shoulder belt) on side-facing seats. The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. That is, the agency believed that lap belts were not less protective than lap and shoulder belts on side-facing seats.

Commenters and the petitioner raise safety concerns about the shoulder belt portion of a lap and shoulder belt on side-facing seats. The commenters and the petitioner do not provide information supporting their beliefs about the potential for "serious injury" beyond reciting what NHTSA said on the matter in the November 2013 final rule. Accordingly, NHTSA believes that the potential safety risk at issue is theoretical at this point; as explained in the November 2013 final rule, the agency cannot affirmatively conclude, based on available information, that shoulder belts on side-facing seats are associated with a demonstrated risk of serious neck injuries in frontal crashes. However, at the same time, NHTSA believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule. Given the uncertainties about shoulder belts on side-facing seats, the few side-facing seats there are on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type, NHTSA is granting Hemphill's petition for temporary exemption. The grant will permit Hemphill to install Type 1 seat belts (lap

belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) at those positions, on the OTRBs it manufactures. This exemption does not apply to forward-facing designated seating positions on the petitioner's vehicles. Under FMVSS No. 208, the forward-facing seating positions must have Type 2 lap and shoulder belts.<sup>18</sup>

NHTSA believes that granting Hemphill's petition is consistent with the public interest. The exemption will enable the applicant to sell buses whose overall level of safety is at least equal to that of non-exempted vehicles. Further, we believe that Hemphill is a small entity.<sup>19</sup> Thus, this temporary exemption not only permits the manufacturer to sell vehicles whose overall level of safety is at least equal to that of non-exempted vehicles, but provides relief to a small business by, as the petitioner notes, providing "an objective standard that is easy for manufacturers to understand and meet."

A grant is consistent with the Safety Act. The requested exemption will not impact general motor vehicle safety because the exempted buses will provide overall safety at least equal to that of nonexempted buses. Further, Hemphill produces a small number of affected vehicles annually. Hemphill did not specify in its petition how many buses it would manufacture under the exemption but noted that "fewer than 100 entertainer-type motorcoaches with side-facing seats are manufactured and enter the U.S.

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<sup>18</sup> On October 2, 2019, the National Transportation Safety Board (NTSB) issued Recommendation H-19-14 in connection with the NTSB's investigation of an October 6, 2018 Schoharie, New York limousine crash. H-19-14 recommends that NHTSA "[r]equire lap/shoulder belts for each passenger seating position on all new vehicles modified to be used as limousines." The limousine in the Schoharie crash had between 18 and 22 seating positions and a GVWR of 13,080 lb. Under FMVSS No. 208, vehicles with 11 or more seating positions and a GVWR between 10,000 lb and 26,000 lb are not required to have seat belts in passenger seats. The NTSB recommendation would apply a passenger seat belt requirement to those vehicles.

<sup>19</sup> According to 13 CFR § 121.201, the Small Business Administration's size standards regulations used to define small business concerns, manufacturers of these buses fall under North American Industry Classification System (NAICS) No. 336213, Motor Home Manufacturing, which has a size standard of 1,250 employees or fewer.

market each year.” As noted earlier, the ABA and the National Interstate Insurance Company, as well as the “other petitioners” who have separately filed petitions for temporary exemption, also affirm that fewer than 100 entertainer-type motorcoaches are manufactured each year. Thus, NHTSA concludes that Hemphill will manufacture very few vehicles relative to the 2,500 per manufacturer limit set forth in the Safety Act and 49 CFR 555.6(d)(4). Further, as explained below, in accordance with 49 CFR 555.9 and § 30113(h) of the Safety Act, prospective purchasers will also be notified of the exemption prior to making their purchasing decisions. The vehicles must have a label notifying prospective purchasers that the vehicles are exempted from the shoulder belt requirement of FMVSS No. 208 for the side-facing seats.

### **Labeling**

Under 49 CFR 555.9(b), a manufacturer of an exempted vehicle must securely affix to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle meets all applicable FMVSSs in effect on the date of manufacture “except for Standard Nos. [Listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. \_\_\_\_.” This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c)(2), this information must also be included on the vehicle’s certification label.<sup>20</sup>

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part, but not all, of an

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<sup>20</sup> 49 CFR 555.9(c)(2) refers to § 567.5(c)(7)(iii) as the regulation setting forth the certification statement final-stage manufacturers are to use in their certification labels. That reference to § 567.5(c)(7)(iii) is outdated; it should be to § 567.5(d)(2)(v)(A). The certification label requirements for final-stage manufacturers formerly were in § 567(c)(7)(iii) but the requirements were moved to § 567.5(d)(2)(v)(A) (*see*, 70 FR 7433; February 14, 2005).

FMVSS. In this case, NHTSA believes that a blanket statement that the vehicle has been exempted from Standard No. 208, without an indication that the exemption is limited to the shoulder belt on side-facing seats, could be confusing. A purchaser might incorrectly believe that the vehicle has been exempted from all of FMVSS No. 208's requirements. For this reason, NHTSA believes the two labels should read in relevant part, "except for the shoulder belt requirement for side-facing seats (Standard No. 208, Occupant Crash Protection), exempted pursuant to \* \* \*."

In accordance with 49 U.S.C. 30113(b)(3)(B)(iv), the applicant is granted NHTSA Temporary Exemption No. EX 19-01, from the shoulder belt requirement of 49 CFR 571.208 for side-facing seats on its motorcoaches. The exemption shall remain effective for the period designated at the beginning of this document in the DATES section.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95.

Issued on: November 5, 2019.

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James Clayton Owens  
Acting Administrator

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